

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**PETITION UNDER 28 USC § 2254
FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Joshua Errol Mix Name of Petitioner (include name under which convicted) v. Michael Burgess, Warden Name of Respondent (authorized person having custody) Prisoner No.: 422981 Place of Confinement: Oaks Correctional Facility 1500 Caberfae Highway Manistee, MI 49660	
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PETITION
(Print Clearly)

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Berrien County Circuit Court, St. Joseph, Michigan
 (b) Criminal docket or case number: 17-003309-FC
2. Date of judgment of conviction: April 11, 2018
3. Identify all counts and crimes for which you were convicted and sentenced in this case: First- and Third-Degree Criminal Sexual Conduct, Assault w/Intent to Commit Sexual Penetration
Domestic Violence (3d offense), Ethnic Intimidation
4. Length of sentence for each count or crime for which you were convicted in this case: CSC I: 360-540 mo.; CSC III: 300-480 mo.; Assault Sexual Penetration: 300-480 mo.; Dom. Vio.: 76-480 mo.; Ethic Intimidation: 46-180 mo., all concurrent, plus \$198 costs.
5. What was your plea?

Not guilty	<input checked="" type="checkbox"/>
Guilty	<input type="checkbox"/>
Nolo contendere (no contest)	<input type="checkbox"/>
6. If you went to trial, what kind of trial did you have? (Check one)

Jury	<input checked="" type="checkbox"/>
Judge only	<input type="checkbox"/>

7. Did you testify at the trial? Yes No
8. Did you file a direct appeal to the Michigan Court of Appeals from the judgment of conviction? Yes No
9. If you did appeal, answer the following:
- (a) Date you filed: May 17, 2018
- (b) Docket or case number: 343920
- (c) Result: Affirmed
- (d) Date of result: January 21, 2020
- (e) Grounds raised: See Attachment A
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Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- (f) Did you seek further review of the decision on appeal by the Michigan Supreme Court? Yes No
- If yes, answer the following:
- (1) Date you filed: March 17, 2020
- (2) Docket or case number: 161124
- (3) Result: Application for Leave to Appeal Denied
- (4) Date of result: September 29, 2020
- (5) Grounds raised: See Attachment A
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Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

- (1) Date you filed: _____
- (2) Docket or case number: _____
-

(3) Result: _____

(4) Date of result: _____

(5) Grounds raised: _____

10. Did you file a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules with respect to the judgment of conviction and sentence? Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Date you filed: **December 14, 2021** _____

(2) Name of court: **Berrien County Circuit Court** _____

(3) Docket or case number: **17-003309-FC** _____

(4) Grounds raised: **See Attachment A** _____

(5) Did you receive a hearing where evidence was given on your motion? Yes No

(6) Result: **Denied** _____

(7) Date of result: **Oral Opinion May 22, 2022; Written Order June 14, 2022.** _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) If you sought further review of the decision in the Michigan Court of Appeals, please answer the following:

(1) Date you filed: **July 4, 2022** _____

(2) Docket or case number: **362024** _____

(3) Result: **Application for Leave to Appeal denied** _____

(4) Date of result: **January 9, 2023** _____

(5) Grounds raised: **See Attachment A** _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you sought further review of the decision in the Michigan Supreme Court, please answer the following:

- (1) Date you filed: January 19, 2023
- (2) Docket or case number: 165242
- (3) Result: Application for Leave to Appeal Denied
- (4) Date of result: June 27, 2023
- (5) Grounds raised: See Attachment A
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Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

12. Other than a direct appeal or a motion for relief from judgment, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes No

13. If your answer to 12 was "yes," give the following information: [Attach additional sheets of paper, if necessary, to answer the following for each petition, application, or motion you filed.]

- (a) (1) Date you filed: _____
- (2) Name of court: _____
- (3) Docket or case number: _____
- (4) Nature of proceeding: _____
- (5) Grounds raised: _____
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(6) Did you receive a hearing where evidence was given on your motion? Yes No

- (7) Result: _____
- (8) Date of result: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- (b) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application, or motion? Yes No

If yes, please provide the following:

- (1) Date you filed: _____
- (2) Name of court: _____
- (3) Result: _____
- (4) Date of result and case number: _____
- (5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- (c) If you did *not* appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

14. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The trial court's rulings on "other acts" evidence, compounded by trial counsel's ineffective assistance, denied defendant a fundamentally fair trial.

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

See Attachment A

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No
(2) If you did not raise this issue in your direct appeal, explain why: Ineffective assistance of counsel on direct appeal
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(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Date motion was filed: December 14, 2021

Name and location of the court where the motion was filed: Berrien County Circuit Court
St. Joseph, MI

Docket or case number: 17-003309-FC

Result (attach a copy of the court's opinion and order, if available): Denied

Date of result: Oral Opinion May 18,2022, Written Order June 14, 2022

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: COA: July 4, 2021 MSC: January 9, 2023

Name and location of court: Michigan Court of Appeals and Supreme Court; Lansing, MI

Docket or case number: COA: 362024; MSC: 165242

Result (attach a copy of the court's opinion and order, if available): _____

Applications for Leave to Appeal Denied

Date of result: COA:January 19, 2023; MSC: June 27, 2023

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.)

that you have used to raise Ground One in the state courts: _____

(e) If you did not raise Ground One in the trial court **AND** the Michigan Court of Appeals **AND** the Michigan Supreme Court, explain why: _____

GROUND TWO: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Two:

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No
(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No
(2) If your answer to Question (c)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to raise Ground Two in the state courts: _____

(e) If you did not raise Ground Two in the trial court **AND** the Michigan Court of Appeals **AND** the Michigan Supreme Court, explain why: _____

GROUND THREE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.)

that you have used to raise Ground Three in the state courts: _____

(e) If you did not raise Ground Three in the trial court **AND** the Michigan Court of Appeals **AND** the Michigan

Supreme Court, explain why: _____

GROUND FOUR: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available):

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to raise Ground Four in the state courts: _____

(e) If you did not raise Ground Four in the trial court **AND** the Michigan Court of Appeals **AND** the Michigan Supreme Court, explain why: _____

15. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each filed petition, application, or motion:

16. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

17. Give the name and P-number, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Kaitlin Locke (P80724) & Michael Scozzari (P79035)
- (b) At arraignment and plea: Kaitlin Locke (P80724) & Michael Scozzari (P79035)
- (c) At trial: Michael Scozzari (P79035)
- (d) At sentencing: Michael Scozzari (P79035)
- (e) On appeal: Timothy Austin Doman (P77811)
- (f) In any post-conviction proceeding: Mark J. Kriger (P30298) & N. C. Deday LaRene (P16420)
- (g) On appeal from any adverse ruling in a post-conviction proceeding: Mark J. Kriger (P30298) & N. C. Deday LaRene (P16420)

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

19. Notice to Petitioner Regarding Consent

In accordance with the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, you are hereby notified that the United States magistrate judges of this district court may, upon your consent, conduct any or all proceedings in this case, including entry of a final judgment. If you consent, any appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Magistrate judges have greater flexibility in their schedules than district judges, who have heavy criminal caseloads that take priority over civil matters. Accordingly, the magistrate judges are generally able to address habeas petitions sooner. Magistrate judges are experienced trial judges who handle a great number of prisoner habeas petitions.

Your decision to consent to the dispositive jurisdiction of a United States magistrate judge is entirely voluntary. If you do not consent to a magistrate judge, the case will be randomly assigned to a district judge. The magistrate judge already assigned to this case would continue to decide all matters, including the merits of your habeas petition by report and recommendation.

Please check **ONE** box below to indicate whether you voluntarily consent to proceed with a United States magistrate judge or if you would instead prefer that the case be assigned to a district judge.

- I hereby voluntarily consent to the United States magistrate judge conducting all proceedings in this case, including entry of a final judgment and all post-judgment matters.
- I request that this case be assigned to a district judge.

20. Declaration and Signature

Therefore, petitioner asks that the Court grant him or her the relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas
electronically filed. Corpus was placed in the prison mailing system on June 29, 2023 (month, date, year).

June 29, 2023

Date

Signature of Petitioner

N. C. Deday LaRene

Digital signature by N. C. Deday LaRene
DN: cn=N. C. Deday LaRene, o=ou, email=d6644@deday.net, c=US
Date: 2023.06.29 13:19:25 -04'00'

Signature of Attorney (if any)

If the person signing is not petitioner or an attorney, state relationship to petitioner and explain why petitioner is not signing this petition. _____

NOTE: ALL AVAILABLE BRIEFS, ORDERS, AND OPINIONS ARE ATTACHED AS ATTACHMENT B